

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**
Charlotte Division

STEPHANIE R. SMITH,)	
)	Case No. 3:24-cv-401
Plaintiff,)	
)	Formerly Case No. 24CV011404-590 in
v.)	the Mecklenburg District Court – Small
)	Claims Division
INTERNAL REVENUE SERVICE,)	
)	
)	
Defendant.)	
_____)	

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. § 1441, 1442, and 1446, the United States of America, removes this civil action formally pending as *Stephanie R. Smith v. Internal Revenue Service.*, case number 24CV011404-590 from the Mecklenburg District Court Division- Small Claims, Mecklenburg, North Carolina, to the United States District Court for the Western District of North Carolina, Charlotte Division. As grounds for the removal, the United States asserts as follows:

1. On March 8, 2024, plaintiff Stephanie R. Smith filed a complaint in the Mecklenburg District Court – Small Claims Division in Mecklenburg County, North Carolina against the Internal Revenue Service for a claim of refund. The complaint was given case number 24CV-011404-590. The complaint, summons, and attachments to the complaint are attached as the United States’ Exhibit A. *See also* 28 U.S.C. 1446(a)
2. The United States was named as a party because plaintiff seeks a “federal tax refund of \$691.98 from the 2018 tax year.” *Id.* Ms. Smith states that the IRS made a transcription error when processing her return and sent her refund to a bank account she is not associated with.

3. Federal law provides that “[e]xcept as otherwise provided by Act of Congress, any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant” to the district court of the United States for the district in which the action is pending. 28 U.S.C. § 1441(a). Because this is a civil action against the United States, district courts have the United States original jurisdiction over it. *See also* 28 U.S.C. § 1442(a) (authorizing the United States to remove civil actions filed in state court against the United States or its agencies).

4. The complaint constitutes a civil action commenced in a state court against the Internal Revenue Service, an agency of the United States, which may be removed by the United States to the district court of the United States for the district and division embracing the place in which it is pending pursuant to 28 U.S.C. § 1442(a).

5. The Mecklenburg District Court – Small Claims Division in Mecklenburg County, North Carolina is within the territorial bounds of the United States District Court for the Western District of North Carolina. *See*, <https://www.ncwd.uscourts.gov/jurisdiction>. Accordingly, removal of the complaint to the United States District Court for the Western District of North Carolina is proper under 28 U.S.C. §§ 1441, 1442.

6. Under 28 U.S.C. § 1446(b), the defendant has thirty days from “receipt of a pleading, through service or otherwise” to file a Notice of Removal. The trigger for the thirty-day period beings upon formal receipt of the complaint by service of process. *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 352-53 (1999); *Riggs v. Fling Irrigation, Inc.*, 535 F. Supp. 2d 572, 574 (W.D.N.C. 2008). This Notice of Removal is timely because the United States was served on March 20, 2024.

7. A copy of this Notice of Removal and a Notice of Filing of Notice of Removal will be filed with the Clerk of the Mecklenburg District Court – Small Claims Division promptly after filing this Notice in this Court, and a copy will be sent to all parties to this case, by U.S. Mail, postage prepaid. *See* 28 U.S.C. § 1446(d).

8. By filing this Notice of Removal, the United States does not waive any claims, rights, defenses, or objections.

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Dated: April 19, 2024

DAVID A. HUBBERT
Deputy Assistant Attorney General

/s/ Amanda K. Tomack

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April, 2024, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, filed the foregoing document with Mecklenburg District Court – Small Claims Division e-filing system, and that I further mailed a copy of the foregoing, postage paid, to the following:

Stephanie R. Smith
5119 Block House Ct. #636
Charlotte, NC 28277-5595

/s/ Amanda K. Tomackl
AMANDA K. TOMACK
Trial Attorney
United States Department of Justice, Tax Division